

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**INTEGRITY TRANSPORTATION, LLC,
(U. S. DOT No. 1616077)**

Petitioner

**Docket No. FMCSA-2010-0032
(Midwestern Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

1. Background

By letter dated January 18, 2010, Integrity Transportation, LLC (Petitioner) requested administrative review of a conditional safety rating pursuant to 49 CFR 385.15. The rating was assigned following a compliance review of Petitioner completed on September 8, 2009, and became effective on November 24, 2009.

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to part 385. As pertinent, ratings are assigned for each of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.¹

The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.² A pattern of noncompliance with a critical regulation exists when the number of violations equals 10

¹Appendix B to 49 CFR part 385, section III. A.(b).

² These regulations are identified in Appendix B to 49 CFR part 385, section VII. However, the initial rating for the vehicle rating factor will be conditional if the carrier has a vehicle out of service rate exceeding 34% based on three or more roadside inspections during the 12 months preceding the compliance review.

percent or more of the instances examined.³ The rating for factor six, recordable accident rate, is determined by the number of recordable crashes per million vehicle miles traveled by the carrier.

A carrier is assessed one point for each violation of an acute regulation or each pattern of noncompliance with a critical regulation.⁴ The carrier will be rated unsatisfactory in a rating factor if the acute and/or critical violations for that factor total two or more points. It will be rated conditional in a factor if the acute and/or critical violations equal one point.⁵ Under the Safety Rating Table, an unsatisfactory rating in any single rating factor will result in an overall conditional rating, even if the carrier is rated satisfactory in all other applicable factors.

Petitioner's conditional safety rating resulted from an unsatisfactory rating for rating factor three (operational). It was assessed two points for this factor based upon a pattern of noncompliance with critical regulation 49 CFR 395.8(e), false reports of records of duty status. Petitioner also received conditional ratings for rating factors two (driver) and four (vehicle). Its conditional rating for factor two was based upon an alleged violation of acute regulation 49 CFR 383.51(a), knowingly allowing, requiring, permitting or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. Petitioner's conditional rating for rating factor four was based on a vehicle out-of-service rate of 50%.

³ To constitute a pattern, however, there must be more than one violation of a critical regulation. See Appendix B to 49 CFR part 385, section II.(g).

⁴ However, patterns of noncompliance with critical regulations in 49 CFR part 395 are assessed two points, in accordance with Appendix B to 49 CFR part 385, section II. (h).

⁵ Except as noted in Footnote 2.

2. Decision

Under 49 CFR 385.15(c)(2), a motor carrier must make a request for administrative review of a safety rating issued under § 385.11(c) within 90 days of the date of the proposed rating.⁶ Based on Petitioner's statement that its rating became final November 24, 2009, the rating would have been proposed on or about September 25, 2009.⁷ Because the request for administrative review is dated 114 days after the date the rating was proposed, it is untimely and will be dismissed.

Even if the request for review had been timely filed it would have been denied. Petitioner challenged only the alleged § 383.51(a) violation. However, for the sake of argument, if that violation was removed from the compliance review report, Petitioner's safety rating would remain conditional, based on its unsatisfactory rating for the operational factor, which Petitioner did not dispute in its petition for administrative review.

THEREFORE, *It Is Hereby Ordered*, the petition for administrative review filed by Integrity Transportation, LLC, is dismissed.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

2.17.10
Date

⁶ Unless a safety rating is satisfactory or improved a previous unsatisfactory rating, it is considered to have been issued under § 385.11(c). According to Petitioner, its conditional rating was a downgrade from a previous satisfactory safety rating.

⁷ For property carriers, such as Petitioner, that do not transport hazardous materials in quantities requiring placarding, a proposed safety rating becomes final 60 days after the date of the notice. See § 385.11(c)(2). Thus the notice would have been issued on September 25, 2009.

CERTIFICATE OF SERVICE

This is to certify that on this 18 day of February, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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